



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION II  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866**

December 12, 2013

**BY EMAIL**

Carol Dinkins, Esq.  
Vinson & Elkins  
First City Tower  
1001 Fannin St., Suite 2500  
Houston, TX 77002

Re: Diamond Alkali, Lower Passaic River Study Area – River Mile 10.9  
Unilateral Administrative Order for Removal Response Activities  
USEPA Region 2 CERCLA Docket No. 02-2012-2020

Dear Ms. Dinkins:

This will respond to your letter dated December 10, 2013 on behalf of Occidental Chemical Corporation ("Occidental"), Maxus Energy Corporation ("Maxus") and Tierra Solutions, Inc. ("Tierra").

Your letter states that Occidental and your other clients are willing and available to seek ways for Occidental to participate and cooperate in the RM 10.9 Time Critical Removal Action ("TCRA"), as required by the Unilateral Administrative Order for Removal Response Activities ("UAO"). However, Occidental declines to perform the tasks identified by EPA, on the grounds that they are not suitable because they are properly the responsibility of the Cooperating Parties Group ("CPG") and can be more efficiently performed by the CPG.

EPA does not agree with this conclusion. Occidental's response does not satisfy the terms of the UAO.

First, Paragraph 12 of the UAO states that the Administrative Settlement Agreement and Order on Consent for Removal Response Activities ("RM 10.9 AOC") requires the RM 10.9 Settling Parties (essentially, the CPG) to conduct the same response actions as those required by the UAO. Further, Paragraphs 15 and 16 state, respectively, that the undertaking of any requirement of the UAO by any other person shall not relieve Respondent (Occidental) of its obligation to perform each requirement of the UAO, and that any failure to perform any requirement of the Statement of Work by any other person with whom Respondent is coordinating or participating in the performance of such requirement shall not relieve Respondent of its obligation to perform each requirement of the UAO. The fact that the CPG is

bound by the RM 10.9 AOC to perform the removal action is acknowledged by the UAO and is not a hindrance to Occidental's compliance.

Second, the fact that Occidental's performance of the tasks identified by EPA might be inefficient is not a basis to decline to perform the work. Nor does EPA view the offer to pay EPA's oversight costs to be compliance with the UAO. The UAO does not provide a mechanism for Occidental to pay EPA. To establish compliance, Occidental can either perform part of the removal action, or pay for work. Paying for removal work, however, does not mean paying EPA's oversight costs.

EPA encourages Occidental to reconsider its decision not to implement the tasks identified by the agency in our recent correspondence and our meeting on November 19, 2013. Otherwise, Occidental will be out of compliance with the UAO.

We are aware Occidental's extended period to establish compliance with the financial assurance provision of the UAO expires on December 15, 2013, which is a Sunday. If Occidental responds to EPA by December 16, 2013, we will evaluate how to address the financial assurance provision at that time.

We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah P. Flanagan". The signature is fluid and cursive, with the first name "Sarah" being more prominent.

Sarah P. Flanagan  
Assistant Regional Counsel

cc: R. Basso, ERRD  
S. Vaughn, ERRD  
P. Hick, ORC